

MT LEGISLATIVE HISTORY

Chapter 523 1985

Bill H _____ S 322

Original bill & hist. ☒ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Mar 19 ☒ C

Hearing Date(s) Feb 19 ☒ C

Mar 28 ☒ C

_____ ☐ C

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_____ ☐ C

_____ ☐ C

Date Out Mar 28 ☒ C

Feb 19 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

1 Senate BILL NO. 322
2 INTRODUCED BY State
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING INTEREST ON A
5 TORT TO ACCRUE BEGINNING FROM THE DATE 30 DAYS AFTER THE
6 CLAIMANT PRESENTED A WRITTEN STATEMENT TO THE OPPOSING PARTY
7 STATING THE CLAIM."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Interest on torts. (1) Subject to
11 subsection (2), in an action for recovery on an injury as
12 defined in 27-1-106, a prevailing claimant is entitled to
13 interest at a rate of 10% on any claim for damages that are
14 capable of being made certain by calculation, beginning from
15 the date 30 days after the claimant presented a written
16 statement to the opposing party stating the claim and how
17 the specific sum was calculated.

18 (2) The interest provisions of subsection (1) do not
19 apply to damages not capable of being made certain by
20 calculation, including but not limited to damages for:

21 (a) pain and suffering;

22 (b) injury to credit, reputation, or financial
23 standing;

24 (c) mental anguish or suffering; and

25 (d) punitive damages.

1 Section 2. Codification instruction. Section 1 is
2 intended to be codified as an integral part of Title 27,
3 chapter 1, part 2, and the provisions of Title 27, chapter
4 1, part 2, apply to section 1.

-End-

CHAIRMAN--MAZUREK, JOE
NORMAL SCHEDULE==>

SITE: OLD SUPREME COURT ROOM

DAYS: M-TU-W-TH-F

TIME: 10:00 A.M.-12 NOON

SECRETARY-STALEY, CINDY

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0299	2/01	2/15	2/23	TABLED		2/15
STORY, PETE			TRANSFER FROM DNRC TO DISTRICT COURTS AUTHORITY TO DETERMINE WATER RIGHTS			
SB0313	2/04	2/14	2/14, 2/15			
DANIELS, M.K.			CONSTITUTIONAL REFERENDUM TO PROVIDE FOR ONE SENATOR PER COUNTY			
SB0321	2/04	2/18		DO PASS		2/18
FULLER, DAVID E.			CONSIDER DANGER TO COMMUNITY, OTHERS TO SET BAIL; EXPAND BAIL CONDITIONS			
SB0322	2/05	2/19		PASS AS AMENDED		2/19
TOWE, THOMAS E.			ALLOWING INTEREST ON A TORT FROM PRESENTING WRITTEN CLAIM			
SB0328	2/11	2/15		PASS AS AMENDED		2/16
BROWN, BOB			AMEND LAW GRANTING IMMUNITY TO PERSON GIVING BLOOD ALCOHOL TEST			
SB0331	2/06	2/14		DO PASS		2/14
CHRISTIAENS, B.F. CHRIS			PRIVATE ENFORCEMENT OF HUMAN RIGHTS COMMISSION ORDERS			
SB0332	2/06	2/19		PASS AS AMENDED		2/19
TOWE, THOMAS E.			LIBRARY CONFIDENTIALITY ACT			
SB0351	2/08	2/15		ADVERSE REPORT		2/15
KEATING, THOMAS F.			RESTITUTION TO VICTIMS OF ACCIDENTS CAUSED BY UNINSURED MOTORISTS			
SB0352	2/08	2/21	2/21	DO PASS		2/21
LYBECK, RAY			RAISE TO 18 AGE FOR ENDANGERING WELFARE OF CHILDREN			
SB0364	2/09	2/21		PASS AS AMENDED		2/23
PINSONEAULT, R.J. (DICK)			DEATH PENALTY FOR SELLING OPIATE TO A PERSON WHO DIES FROM USING IT			
SB0375	2/13	2/20		PASS AS AMENDED		2/22
TOWE, THOMAS E.			CONDITIONAL RELEASE OF MENTAL HEALTH PATIENTS - REVOCATION OF COND. RELEASE			

Senate Judiciary Committee
Minutes of the Meeting
February 19, 1985
Page 2

bill arose out of an incident in his county relating to an habitual alcoholic--the person who is drinking and drives in a reckless manner. As far as a plea bargaining tool, it is necessary. Apparently others have a couple problems with the bill. Mr. Ryder thinks the differences can be worked out. Kim Kradolfer, Assistant Attorney General, testified in support of the concept of the bill, although she stated they have some problems with it. The blood alcohol concentration seems to be an arbitrary figure. This bill does not lock in cleanly with the existing DUI bill we have. The factors which have been set forth as aggravating circumstances cause problems. They see the potential for lesser-included offenses in those factors. The language requires he must be violating these charges. There is no clear indication if he must be found guilty. The penalty section is somewhat lower than a regular DUI offense. On page 8, the Division of Motor Vehicles is given the authority to revoke licenses. The division prefers to have it laid out for a mandatory revocation and directions as to whether it can be reinstated. Jeannette Buchanan, Chairman of the Missoula County DUI Task Force, spoke in favor of the bill (see written testimony attached as Exhibit 4). David Lackman, Lobbyist for the Montana Public Health Association, testified in support of the bill (see witness sheet attached as Exhibit 5).

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Blaylock asked Mr. Ryder where he came up with the .23 blood alcohol concentration. Mr. Ryder responded by reviewing different cases where serious accidents occurred. That was the level where the extremely reckless driving was occurring. There seems to be a lack of research in this area as to what level of alcohol causes accidents. His research was done by reviewing newspaper articles. Chairman Mazurek asked Ms. Kradolfer if she had proposed amendments which would make this satisfactory. She replied no. Chairman Mazurek then stated he would appreciate it if they wanted those concerns addressed, they please propose amendments to that effect.

CLOSING STATEMENT: Senator Weeding stated his suggestion would be that Mr. Ryder and the Attorney General's office get together and that their concerns be given a little thought. He believes they can work these differences out and come back in a day or two with something.

Hearing on SB 381 was closed.

CONSIDERATION OF SB 322: Senator Tom Towe, sponsor of SB 322, stated this bill takes care of an area that has been in very serious need for a long time. Senator Towe proposed amendments to the bill (Exhibits 6 and 7). He testified interest alone can be a great deal of loss, and there is no way under present law that someone can be compensated for that

loss. He believes this is one of the major reasons we have seen a growth in punitive damages, because that is the one way juries can get back at that situation. This bill allows in a modified way interest on claims prior to judgment. Interest would be awarded on any claim for damages that could be made certain by calculation. That is in effect special damages. It would not under this bill be awarded on any future damages until such damages were incurred, and it does not apply for the damages listed. He has worked the amendments out with the insurance companies. All of those damages are not capable of specific determination. He has no problem in allowing interest on those damages. We will leave it up to the jury to award what they think is appropriate. But for those specific damages that are capable of determination, there is no excuse for not allowing interest on damages. The interest is not awarded from the date of the accident or the date the claim is incurred. Interest commences only after you make a written statement of claim to the defendant or his agent and then give him 30 days to respond. If he doesn't pay, interest starts from that date. The judge will figure out the interest. New subsection (4) is to encourage payments in advance of trial. He has been asked to add the following words to that subsection: "and shall not be made known to the jury." It is his understanding that some of the insurance companies' independent agents will support the bill.

PROPOSERS: Roger McGlenn, Executive Director, Independent Insurance Agents Association of Montana, testified they have opposed virtually every prejudgment bill in previous legislative sessions. However, the Independent Insurance Agents Association of Montana supports SB 322. They feel SB 322 will ensure appropriate indemnification of claimants' out-of-pocket expenses. Karl Englund, representing the Montana Trial Lawyers Association, testified 22 states and the District of Columbia have some form of prejudgment interest which runs from a flat 15% in Oklahoma to Virginia where juries decide when interest will commence running. The federal courts have moved toward prejudgment interest based on the theory of unjust enrichment. Interest is not a duplication of any other damage award. It is merely a recognition that the defendant owed some money to the other party. The system, therefore, as it presently exists, encourages delay. If the defendant owes a claim, there is no incentive to pay early, because he is holding money which he can invest. This bill presents a reasonable compromise between their concerns and those of the insurance companies. John Hoyt, a lawyer from Great Falls, testified some insurance companies are better than others (see witness sheet attached as Exhibit 9). Even a good insurance company sometimes takes a bad stance. This bill is a step in the right direction. The insurance company would have to pay his damages or pay interest on them. The time for prejudgment interest has arrived. The old days are gone. Court congestion is a terrible problem. Bonnie

Tippy, representing the Alliance of American Insurers, testified they are in strong support of Senator Towe's bill. Senator Towe announced most of the amendments were proposed by Bob James, of State Farm, who couldn't be here but has asked that they be recorded as supporting the bill.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Crippen pointed out you are going to give 10% interest on the claim. Proposed subsection (4) states any payment by an insurance company or interest thereon shall not be an admission of liability. He questioned what happened if you went to court and it were determined the insurance company is not liable. He asked if you would get your money back. Senator Towe replied he didn't know how that would work out, and he hadn't thought that through. Senator Crippen asked if they got 10% interest on the money they paid. Senator Towe answered he was not sure they could get their money back. If it were paid in good faith, at that point the company would probably be obligated to continue and would not be liable for that. Mr. Englund stated this provision tries to encourage settlement. They can fight over such things as pain and suffering, but they have gone ahead and settled the special damages part. If they think they don't owe that, they don't pay it. Senator Crippen said suppose they went ahead to avoid any charges of bad faith. Mr. Englund replied their obligation to settle cases in good faith only arises once they feel their liability is reasonably clear. Senator Mazurek asked if we needed to address that and say one way or the other. He assumes no one would expect it be paid back, but felt we might need to address that possibility. Senator Towe asked about third party liability. Senator Mazurek asked if we needed to say he does not have to pay it back or remain silent and let someone else decide. Mr. Hoyt stated he has yet to try a lawsuit where the insurance company did not have competent counsel. He could not conceive under this bill the insurance company's making a gratuitous contribution, but if they did, God bless them. He proposed an amendment that the jury not be advised of prejudgment interest at any time, as that is a matter for the judge. Glen Drake spoke addressing the issue of advising the jury on prejudgment interest. He felt the reason for that is to reach fairness. You will get an argument whether the time delays are considered. All we are doing is instructing the jury you find the amount of damages and the judge will award the interest, so he disagrees. Senator Mazurek asked if you would run the risk of instructing along those lines by inferring there has been something paid in advance. Mr. Drake responded no.

CLOSING STATEMENT: Senator Towe addressed the notion that there is a concern raised about the last part of subsection (4) where it should not

be revealed to the jury and should not be considered an admission of liability. Most often that is an agreement and is generally entered into by counsel. It is usually stipulated out of the case, so it usually doesn't come up. It is not an issue that should happen or should concern us. He thinks we should leave the language alone. He has worked on this bill with the insurance agents. The bill originally came out of a meeting with the agents in Billings. The insurance companies have worked on it. He is pleased they are all trying to work for the common goal, and that is to improve justice in our courts.

Hearing on SB 322 was closed.

CONSIDERATION OF SB 332: Senator Tom Towe, sponsor of SB 332, testified this bill provides for confidentiality of library records. This was presented to him by the librarian in Billings. It has been discussed and is generally supported by libraries throughout the country. The issue has arisen regarding whether or not a librarian should disclose to law enforcement the library records of individuals who have checked out books. This matter was addressed some ten years ago in the 1975 and 1977 sessions when he proposed a comprehensive privacy bill. That bill did not pass, and we are now doing it on a piecemeal basis. This is one of the pieces. An individual himself should always be able to get his own information. Senator Towe then asked that the committee consider an amendment (Exhibit 10) which addresses the matter of turning the records over to the county attorney or someone else for collection. Senator Towe believes the problem is when an over-zealous law enforcement officer is trying to find out if some person is guilty of blowing up a building, he goes to the library to find out if he has checked out a book relating to that type of matter. The problem is everyone that has checked out a similar book immediately becomes suspect. That is what we are talking about. We cannot allow open dissemination of these records. It may not be the county attorney. It may be some local person. That has a chilling effect on reading and literature that we want to avoid.

PROPOSERS: Sara Parker, State Librarian, presented written testimony in support of the bill (Exhibit 11). Barbara Rudio, President of the Montana Library Association, presented written testimony in support of the bill (see witness sheet attached as Exhibit 12). Paul Dunham, University of Montana System and Montana Library Association, testified they have three concerns with the bill: (1) Its effect on overdue book fining policies. (2) The effect on libraries with manual card check-out systems. (3) The effect on academic plagiarism. He suggested amending page 2, line 3, to read willful disclosure. He testified all librarians are in support of the bill. Deborah Schlesinger, Legislative Chair of the Montana Library Association, presented written testimony in support of the bill (see witness sheet attached as Exhibit 13). Brenda Schye,

ROLL CALL

SENATE JUDICIARY

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 021

[illegible]

1 Senate BILL NO. 322
 2 INTRODUCED BY Sen
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING INTEREST ON A
 5 TORT TO ACCRUE BEGINNING FROM THE DATE 30 DAYS AFTER THE
 6 CLAIMANT PRESENTED A WRITTEN STATEMENT TO THE OPPOSING PARTY
 7 STATING THE CLAIM."
 8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 10 Section 1. Interest on torts. (1) Subject to
 11 subsection (2), in an action for recovery on an injury as
 12 defined in 27-1-106, a prevailing claimant is entitled to
 13 interest at a rate of 10% on any claim for damages that are
 14 capable of being made certain by calculation, beginning from
 15 the date 30 days after the claimant presented a written
 16 statement to the opposing party ^{on his agent} stating the claim and how
 17 the specific sum was calculated.

18 (2) The interest provisions of subsection (1) do not
 19 apply to damages not capable of being made certain by
 20 calculation, including but not limited to ^{FUTURE} ^{UNTIL SUCH DAMAGES ARE INCURRED AND DAMAGES} damages for:

- 21 (a) pain and suffering;
 22 (b) injury to credit, reputation, or financial
 23 standing;
 24 (c) mental anguish or suffering; and
 25 (d) ^{EXEMPLARY OR} punitive damages.
 (e) loss of established way of life;
 (f) loss of consortium; and

1 Section 2. Codification instruction. Section 1 is
 2 intended to be codified as an integral part of Title 27,
 3 chapter 1, part 2, and the provisions of Title 27, chapter
 4 1, part 2, apply to section 1.

-End-

SENATE JUDICIARY COMMITTEE
 EXHIBIT NO. 6
 DATE 02/19/85
 BILL NO. 58 322

(3) THE JURY IS TO BE ADVISED BY THE COURT THAT THE COURT WILL DETERMINE THE AMOUNT OF PREJUDGEMENT INTEREST DUE, IF ANY, ON ANY JUDGMENT RENDERED.

(4) Any payment by a party of any claim or interest thereon as set forth in subsection 1.

INTRODUCED BILL

AMENDMENTS
SENATE BILL 322

1. Page 1, line 16.

Following: "party"

Insert: "or his agent"

2. Page 1, line 20.

Following: "to"

Insert: "future"

Following: "damages"

Insert: "until such damages are incurred and damages"

3. Page 1, line 25.

Following: "(d)"

Insert: "exemplary or"

Following: "damages."

Insert: "(e) loss of established way of life;

(f) loss of consortium; and

(g) attorney fees

(3) The jury is to be advised by the court that the court will determine the amount of prejudgement interest due, if any, on any judgement rendered.

(4) Any payment be a party of any claim or interest thereon as set forth above shall not be an admission of liability."

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 7

DATE 02/19/85

BILL NO. SB 322

(This sheet to be used by those testifying on a bill.)

NAME: ROGER McGLENN DATE: 2-19-85

ADDRESS: BOX 5593 HELENA, MT. 59604

PHONE: 442-9555

REPRESENTING WHOM? INDEPENDENT INSURANCE AGENTS ASSOC. OF M

APPEARING ON WHICH PROPOSAL: SB-322

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENT: ATTACHED

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 021985
BILL NO. SB 322

REGARDING SENATE BILL NO. 322

TO: THE SENATE JUDICIARY COMMITTEE
FROM: THE INDEPENDENT INSURANCE AGENTS ASSOCIATION OF MONTANA
DATE: FEBRUARY 19, 1985
RE: SUPPORT OF SENATE BILL NO. 322

The Independent Insurance Agents Association of Montana has opposed virtually every prejudgement interest bill in previous Montana legislative sessions. Our concern with previous bills has been the broad manner in which they have been drafted. We felt that in many cases these bills have gone past the principle of indemnification and created additional unnecessary cost that the insurance companies would pass along to the Montana insurance consumer.

The Independent Insurance Agents of Montana do support SB-322. We feel that SB-322 is a responsible bill that properly indemnifies claimants and does not create unnecessary costs for Montana insureds. The Independent Insurance Agents of Montana strive for fair, equitable and prompt claims settlement. We feel that SB-322 will insure appropriate indemnification of a claimants out-of-pocket expenses.

We would also like to thank Senator Towe for the opportunity to provide many of our thoughts in regard to this issue and for his efforts on this bill.

We ask that you give a do pass recommendation on SB-322.

Respectfully submitted by:

Roger McGlenn Independent Insurance Agents Association of Montana

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 02/19/85
BILL NO. SB 322

STANDING COMMITTEE REPORT

Page 1 of 2

February 19 19 85

MR. PRESIDENT

We, your committee on JUDICIARY
having had under consideration SENATE BILL No. 322
first reading copy (white)
color

ALLOWING INTEREST ON A TORT FROM PRESENTING WRITTEN CLAIM

Respectfully report as follows: That SENATE BILL No. 322

be amended as follows:

1. Page 1, line 16.

Following: "party"

Insert: "or his agent"

2. Page 1, line 20.

Following: "to"

Insert: "future"

Following: "damages"

Insert: "until such damages are incurred and damages"

3. Page 1, line 24.

Following: "suffering;"

Strike: "and"

XXXXXX
DO NOT PASS

XXXXXX
DO NOT PASS

CONTINUED

Chairman.

Page 2 of 2

SENATE BILL NO. 322

4. Page 1, line 25.

Following: "(d)"

Insert: "exemplary or"

Following: "damages."

Insert: "(e) loss of established way of life;

(f) loss of consortium; and

(g) attorney fees

(3) The jury is to be advised by the court that the court will determine the amount of prejudgment interest due, if any, on any judgment rendered.

(4) Any payment by a party of any claim or interest thereon as set forth in subsection (1) shall not be an admission of liability and shall not be made known to the jury."

AND AS AMENDED

DO PASS

Senator Joe Mazurek

CLERICAL

Date: 2/20/85

Senate Bill 322

Time: 5:37 PM

In accordance with Joint Rule 3-7(b) the following clerical errors may be corrected:

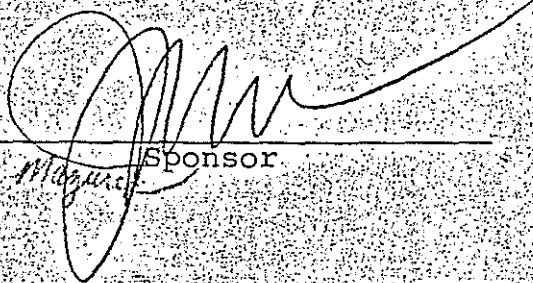
Judiciary Rep. of 7/19
Amendment 4 following "damages"
Strike: ". "

insert: "; (e)... "

(outli.
for

"(g) attorney fees."

2/22/85
2:20 p.m.


Maguire
Sponsor

Secretary of Senate
or
Chief Clerk

Legislative Council

STATUS SHEETFORTY-NINTH

LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

<u>SENATE</u> BILL NO.	<u>ENTERED</u> COMM.	<u>DATE</u> CONSIDERED	<u>OUT OF</u> COMM.	<u>DO PASS</u> DATE	<u>DO NOT</u> PASS DATE	<u>DO PASS</u> AS AMEND. DATE	<u>BE CON-</u> CURRED IN DATE	<u>BE CONC. IN</u> AS AMENDED DATE	<u>BE NOT CON-</u> CURRED IN DATE
SB 322	2/27/85	3/19/85 3/28/85	3/28/85					3/28/85	
SB 327	2/27/85	3/19/85	3/19/85				3/19/85		
SB 328	2/27/85	3/19/85 3/27/85	3/27/85						3/27/85
SB 331	2/27/85	3/19/85	3/19/85					3/19/85	
SB 332	2/27/85	3/21/85	3/21/85					3/21/85	
SB 257	2/27/85	3/15/85	3/15/85					3/15/85	
SB 267	2/27/85	3/15/85	3/15/85				3/15/85		
SB 268	2/27/85	3/20/85 3/26/85	3/26/85					3/26/85	
SB 290	2/27/85	3/15/85	3/15/85				3/15/85		
SB 292	2/27/85	3/15/85	3/15/85				3/15/85		
SB 294	2/27/85	3/21/85	3/21/85				3/21/85		
SB 352	2/27/85	3/21/85	3/21/85				3/21/85		
SB 406	2/27/85	3/22/85	3/22/85					3/22/85	
SB 116	3/7/85	3/25/85 3/27/85	3/30/85 (Tabled 3/27/85)			(Un-tabled 3/29/85)		3/30/85	
SB 375	3/7/85	3/20/85 3/27/85	3/27/85					3/27/85	
SB 376	3/7/85	3/20/85 3/27/85							

Rep. Miles asked about the flipside of this issue. Is the person from whom the blood is taken immune from the technician charging him with liability? Mr. Smith said no, this amendment only has to do with the section 61-8-405.

Rep. Addy said he feels the "without consent" language is a lot broader than "without resistance". He wonders if we haven't taken the exclusion of liability and tracked it down to only those cases where negligent homicide or homicide is suspected. Mr. Smith said the word "proper" was initially taken out -- now "proper" has been put back in on line 11, page 2. He said that now we are talking about exculpatory only as a result of any resistance offered by the suspected person. He said that is the difference.

Rep. Eudaily said there is no statement of intent -- there is no extension of anyone's authority in here. He wanted to know if it was needed. Mr. Smith said this is not new material but subsection 6 has already been in the law. He said they didn't feel that this was anything that needed to be addressed in amendments to this statute.

In response to another question asked by Rep. Addy, Mr. Smith said the possible criminal liability for overcoming resistance would be assault. Rep. Addy asked Mr. Smith if there is an assault anytime there is a non-consensual subject. Mr. Smith said yes, that technically, it would be an assault, but it would not be an actionable assault.

There being no further questions, hearing closed on SB 328.

CONSIDERATION OF SENATE BILL NO. 322: Senator Tom Towe, Senate District #46, sponsor of SB 322, testified. This bill addresses the subject that he has been working on for a long time. He believes that they finally have a general, worked-out, agreement solution. This bill addresses the question of pre-judgment interest in a little different fashion than it has been in the past, and he feels this solves the problem. The bill says that there shall be 10% on any claim for damages that are capable of being made certain by calculation. Interest on the claim doesn't accrue until 30 days after the claim has been filed. So, the company has 30 days in which to evaluate. It does not apply to the damages not capable of being made certain. Future damages would be excluded along with others as further illustrated in the bill. Senator Towe pointed out that the insurance companies have been working with him on this particular piece of legislation.

Oger McGlenn, Executive Director of the Independent Insurance Agents Association of Montana, testified. He said the association has been opposed to virtually every pre-judgment interest bill in previous legislative sessions. However, they feel SB 322 is a responsible bill.

Karl Englund, representing the Montana Trial Lawyers' Association, spoke in favor of the bill. He said that presently 22 states and the District of Columbia have some form of pre-sentence interest fees. There is now a bill in the U.S. Congress to allow pre-judgment interest in federal courts. He said because of the efforts of Sen. Towe and the independent insurance agents, we have been able to introduce a bill which answers some of the legitimate concerns that the opponents to some of their bills had before. He feels this bill is a good compromise, and he urged the committee to support it.

Bonnie Tippy, representing the Alliance of American Insurance, feels this is the particular end product that they have agreed to, and she hopes this legislation will not be amended in any of the succeeding legislatures.

There were no further proponents or opponents.

In closing, Senator Towe pointed out that this is a subject that needs to be addressed. He said that in present cases, it is to the advantage of insurance companies not to settle a case quickly since they do not have to pay interest on a tort. Sen. Towe feels that is one of the reasons that punitive damage claims are so high.

QUESTIONS FROM THE COMMITTEE: Rep. Keyser said it still seems like this bill is one-sided -- it deals all with the claimant with no protection whatsoever for the other side. Everything here deals with the prevailing claimant. Rep. Keyser asked what Mr. McGlenn would do in a case where a lot of money was involved and yet there wasn't really a clearly defined liability as far as who was at fault. Rep. Keyser wanted to know why Mr. McGlenn is supporting a bill that is so one-sided. Mr. McGlenn felt in representing their clients that in a litigated case which drags out for a period of time, if, in fact, the insurance company is liable for those expenses, there may be interest accruing on the medical bills and the out-of-pocket expenses that the insured is suffering. In that case, we feel that our client is possibly being indemnified. On the other hand, in litigated cases there is a whole spectrum of claims being made -- in the cases of the non-income damages -- that is not adversely affecting insurance companies and thereby affecting the policy holders by increasing the cost. In some cases, we feel the option is there for the insurance companies to pay that underlying claim without admitting negligence for the additional non-economic expenses.

Rep. Keyser asked what the next step will be for the proponents of this bill. Mr. McGlenn said that in their opinion, there was a form of pre-judgmental interest coming. If not this session -- the next session. We also felt that from their position in representing their clients, that this compromise is

in the best interest of our clients. He further stated that they will become upset if any disapproving changes are made in regard to this bill next session.

Rep. Mercer said he doesn't see any tie between the claim and what a person is actually recoving in this bill. Rep. Mercer asked if interest shouldn't be accrued on the claim but rather on the damages actually received. Sen. Towe said that a person is going to collect entirely on that portion received in actual damages.

Rep. Keyser followed up with some of the questions that Rep. Mercer had. He asked Sen. Towe if he was saying that the language on line 14, page 1, that says "capable of being made certain by calculation" will take care of any amount of total claim that is filed. In other words, if too much claim is filed way above of what the injuries will prove or can be shown, or what the hospital bills reveal that can be calculated -- that the language will take care of that problem. Sen. Towe answered, "Yes, I think very definitely it will." He said that you must add to the fact that if the insurance company legitimately objects and goes through litigation and the jury finally says, "Well, here you claimed \$100,000 and you are right as to \$86,000, but you have \$14,000 that doesn't have anything to do with this accident" -- they shouldn't have to pay interest on the \$14,000 but they should have to pay on the \$86,000 because somebody is out that money and that is what they bought that insurance for.

There being no further questions, hearing closed on SB 322.

EXECUTIVE SESSION:

ACTION ON SB 327: Rep. Cobb moved that SB 327 BE CONCURRED IN. The motion was seconded by Rep. Hammond and discussed.

Rep. Addy said he doesn't know if this legislation is constitutional. He said that we say that there is prima facie case established when the driver of a vehicle cannot be identified.

Rep. Hannah said that the bottom line is that there is a serious problem that needs to be dealt with, and he feels this bill will provide some sort of solution.

Rep. Gould said he would like to see the bill effective immediately because of the problem that exists. We will also find out if it is constitutional.

Rep. Keyser pointed out that if an amendment is placed in the bill, it may be re-tinkered with in the Senate. He would rather see the bill come out on the House floor as is because, at least the bill will become a law. At this late stage in the session, he sees problems with placing an amendment on the bill.

The question was called, and the motion carried unanimously. Rep. Eudaily will carry the bill.

ACTION ON SENATE BILL NO. 322: Rep. Addy moved that SB 322 BE CONCURRED IN. The motion was seconded by Rep. Hammond and discussed. Rep. Eudaily said he still has a problem with the part of the bill that he feels says that the 10% interest rate is only going to apply to what the claimant perceives as damages. Rep. Eudaily doesn't think this bill says that and doesn't have any solution for fixing it. Rep. Addy said that in reading the first section of the bill, the person is not entitled to any interest unless they are the prevailing claimant in an action for recovery of an injury.

Rep. Mercer said that Rep. Addy just disclosed another problem that he sees now. He said that just because a person is a prevailing claimant doesn't mean he is going to get everything he claims that he was entitled to. This says that you get the interest on your claims on the amount actually received. Rep. Mercer suggested that the following be added onto the end of section 1: "Interest accrues only to the extent damages claimed are actually awarded."

Rep. Hannah pointed out that there has been a real effort made on the part of all the parties involved to work out the language in a manner that is acceptable to all sides. Rep. Hannah said that while he is not opposed to an amendment to clarify this, he feels that perhaps action on this bill should be postponed. He said that if an amendment is placed on the bill now that may have a domino effect in another area, the amendments should be reviewed by the interested parties before the bill is passed onto the floor.

Following further discussion, Rep. Addy suggested that page 1, line 13, be amended by striking claim and inserting "judgment". However, it was agreed among the committee that action on SB 322 be postponed.

ACTION ON SENATE BILL NO. 328: Rep. Keyser moved that SB 328 BE CONCURRED IN. The motion was seconded by Rep. Hammond and discussed.

Rep. Addy said the fear he has with the bill is that we are narrowing the exemption from civil and criminal liability rather than expend the way it is worded. He said every place between consent and being charged with homicide, we may be eliminating the immunity from liability. It just seems to him that we are giving a pretty good argument just based upon the discretion of the whole statute. Rep. Addy requested that action on the bill be postponed until he can further talk with Mr. Smith about this bill.

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/19/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)			✓
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger			✓
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

VISITORS' REGISTER

HOUSE JUDICIARY

COMMITTEE

BILL NO. SB 322 (Sen. Towe);
 SB 327 (Sen. Brown);
 SB 328 (Sen. Brown);
 SPONSOR SB 331 (Sen. Christiaens)

DATE March 19, 1985

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Chip Erdmann	MT School Bd Assoc	#327 ✓	
Rick Baltos	OPI	✓	
Leung Brown	OPI	✓	
Chip Stet	Sch Dist #1 Butte	✓	
John Moore	Helena Sch Dist #1	✓	
Chuck Smith	Helena Sch Dist #1	✓	
Darlene Cashman	Heate Falls	✓	
George A. Talt	Helena	✓	
Roger McGlen	INDEPENDENT INSURANCE AGENTS ASSOC. OF MT	322 ✓	
Bonnie Lipp	Alliance of Amer Ins	322 ✓	
Rick Swan	Student-Body		
Anne MacIntyre	Human Rights Comm	SB 331	
Karl Edwards	MT. TRAIL LAWYERS	322 331	
James W. Long	School Admin of MT	327	
David R. Anderson	L.C.S.D. SNR	HB 500 331	
M. Glee	LC SO	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

ACTION ON SENATE BILL NO. 322: Rep. Hammond moved that SB 322 BE CONCURRED IN. The motion was seconded by Rep. O'Hara and discussed.

Rep. Mercer said he has two concerns with this bill. First, has to do with the clarity of definition; secondly, there is no interest included for the claim -- only on the recovered amount. He moved to amend page 1, line 13 following "damages", insert "awarded". Rep. Keyser seconded the motion, and it carried unanimously. Rep. Keyser further moved that SB 322 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Gould and carried a majority voice vote. Rep. Spaeth will carry the bill on the floor of the House.

RECONSIDERATION OF SENATE BILL NO. 26: Rep. Brown moved to take SB 26 off the table. He proposed that the language be limited to lands located wholly within the exterior boundaries of the tribal government's reservation as established by an act of Congress. He said that he has worked extensively with various people concerned with this bill. Rep. Brown indicated that the amendment would be placed in the title of the bill and on pages 2 and 3. Although the bill, as amended, would not solve all of the problems, it may help to go part of the way. Discussion ensued on the reasons behind the bill, and Rep. Hannah said the tribal government would like to trade some of their lands with the state. Rep. Mercer said it may have a detrimental effect on the tax base where the lands are located in two different counties. There was some question of whether the lands would be taxable.

The question was called on the motion to take SB 26 off the table for purposes of reconsideration. The motion carried 10-8 (see roll call vote).

Rep. Brown moved that SB 26 BE CONCURRED IN. The motion was seconded by Rep. Darko. Rep. Brown further moved that the amendments proposed be adopted. The motion was seconded by Rep. Hannah. A copy of the proposed amendments was attached as Exhibit A. Rep. Brown said that the amendments would limit the legislation, but it will address the problems at the Fort Belknap Reservation. In response to Rep. Mercer's concern, Rep. Brown said that state school section or tribal lands do not generate funds for the school district and would not change the present system. The question was called on the motion to adopt the amendments, and it carried on a voice vote. Rep. Brown moved that SB 26 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Darko.

Rep. Hannah moved to amend page 2, line 15 following "AS" by striking "ESTABLISHED BY ACT OF CONGRESS" and inserting "recognized by the federal government". Furthermore, amend page 3, line 16 following "AS" strike "ESTABLISHED BY ACT OF CONGRESS" and insert "recognized by the federal government".

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/28/85

NAME	PRESENT	ABSENT	EXCUSE
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

.....March 28..... 19 35.....

MR.SPEAKER.....

We, your committee onJUDICIARY.....

having had under considerationSENATE..... Bill No.322....

Third reading copy (Blue)
color

ALLOWING INTEREST ON A TORT FROM PRESENTING WRITTEN CLAIM

Respectfully report as follows: ThatSenate..... Bill No.322....

be amended as follows:

1. Page 1, line 13.
Following: "damages"
Insert: "awarded"

AND AS AMENDED,
BE CONCURRED IN
DO-PASS